

FCC MAIL SECTION
DOCKET FILE COPY ORIGINALBefore the
Federal Communications Commission
Washington, D.C. 20554DISPATCHED BY
MM Docket No. 96-67

In the Matter of

Amendment of Section 73.202(b), RM-8774
Table of Allotments,
FM Broadcast Stations.
(Starkville, Mississippi
and Ethelsville, Alabama)

NOTICE OF PROPOSED RULE MAKING

Adopted: March 19, 1996; Released: April 1, 1996

Comment Date: May 23, 1996

Reply Comment Date: June 7, 1996

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Charisma Broadcasting Company ("petitioner"), licensee of Station WMSU(FM), Channel 221A, Starkville, Mississippi, requesting the substitution of Channel 222A from Starkville, Mississippi, to Ethelsville, Alabama, and the modification of Station WMSU(FM)'s authorization to specify Ethelsville as its community of license. Petitioner states that it will apply for the channel, if reallocated to Ethelsville.

2. Petitioner states that its proposal complies with the requirements set forth in Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). Petitioner states that Channel 221A at Starkville is limited in its coverage because it is a grand-fathered short-spaced channel and reallocating Channel 222A to Ethelsville would eliminate this short-spacing while providing a first local aural transmission to the community. Petitioner submits a letter from the mayor of Ethelsville which indicates the community has 175 residents with its own water service, a volunteer fire department, an elected Mayor and Town Council. Furthermore, petitioner argues that Ethelsville is not in an Urbanized Area and reallocation Channel 222A would not deprive Starkville of its only existing service since the community will continue to receive service from Stations WMXU(FM), WKOR(AM) and WSSO(AM).

3. We believe petitioner's proposal warrants consideration since it could provide Ethelsville with its first local FM service and enable Station WMSU(FM) to improve its facilities to those of a 6 kW Class A service. Since petitioner indicated it intends to relocate its transmitter, there will be areas which will lose existing reception service as well as areas which will gain new reception service. Therefore, we request that the petitioner provide information showing the areas and populations which will receive new service and the areas and populations which will lose existing service if Channel 222A is allotted to Ethelsville. In addition, the study should also indicate the number of reception services which are now available within the gain and loss areas.

TECHNICAL SUMMARY

4. Channel 222A can be allotted to Ethelsville in compliance with the Commission's minimum distance separation requirements, with a site restriction of 8.2 kilometers (5.1 miles) northwest to accommodate petitioner's desired site.¹ In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 222A at Ethelsville.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Starkville, Mississippi	221A, 291C2	291C2
Ethelsville, Alabama	--	222A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **May 23, 1996**, and reply comments on or before **June 7, 1996**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Bill Milam, Vice President
Charisma Broadcasting Company
Box 980
Starkville, Mississippi 39759
(Petitioner)

¹ The coordinates for Channel 222A at Ethelsville are North

Latitude 33-28-50 and West Longitude 88-15-16.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.